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VIA EMAIL & OVERNIGHT DELIVERY

California Energy Commission  
Dockets Office  
Attn: Dockets 03-IEP-01  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512

Re: 2004 Transmission Update - Docket No. 03-IEP-01

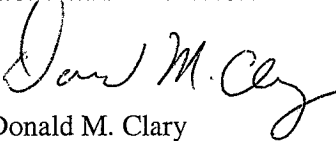
Dear Gentlemen:

Attached (in PDF format) are the comments of the Pechanga Band of Luiseño Mission Indians on the California Energy Commission's Staff's White Paper. An additional copy is being provided via overnight delivery to the Energy Commission's Dockets Unit.

Please contact me if you have any questions.

Sincerely yours,

HOLLAND & KNIGHT LLP

  
Donald M. Clary

cc: John Macarro, Esq.  
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Kristy Chew  
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## **COMMENTS TO THE CALIFORNIA ENERGY COMMISSION CONCERNING THE STAFF'S DRAFT WHITE PAPER**

Docket No. 03-IEP-01  
2004 Transmission Update

In response to the Commission's Notice, the Pechanga Band of Luiseño Mission Indians ("Tribe"), provides the following comments upon the Commission Staff's Draft White Paper, *Upgrading California's Electric Transmission System: Issues and Actions For 2004 and Beyond* ("Draft"). As noted in the Draft, the Tribe previously provided comments upon the Draft Transmission Vision Document.

The Tribe appreciates this opportunity to comment upon the White Paper and notes that as consumers, developers of electricity projects, and, increasingly, operators of utilities, tribal governments have an important interest in confirming that the development of California's transmission system is successful. The Tribe looks forward to cooperation with the all other parties to assure this success.

However, we note that, although portions of our previous comments are referenced in Appendix A to the Draft (in which the Draft Vision Statement is considered), the Tribe's concerns relating to the involvement of tribal governments in the transmission planning process have not been incorporated in the Draft Vision Statement provided by the Staff. The Tribe believes that failure on the part of the Commission to consider the concerns of Native Americans will potentially lead to unnecessary conflict and difficulties in the maintaining of existing transmission facilities and the construction of future facilities. Moreover, after a review of the entire Draft, it is the conclusion of the Tribe that many of the concepts that it directed to the Vision documents, should also be incorporated in the more general provisions of the White Paper.

Before proceeding with the Tribe's specific comments on the White Paper, we would like to first point out that the failure to consider Native American concerns was one of the primary reasons that the Valley-Rainbow Project, one of the major transmission Project failures referenced in the White Paper, was not approved. Proponents of that project failed to consider the significant impacts that the transmission line would have had upon the historical and cultural resources of the Tribe. When these resources were threatened, the Tribe took the necessary steps to protect those resources (and was successful in doing so). The negative outcome of that project can therefore be directly traced to the proponent's failure to consider and address the concerns of the Tribe. It is the Tribe's concern that, if the concerns of Native Americans are not expressly incorporated and addressed in the White Paper and Vision Statement, and the participation of tribal governments in the transmission planning process is not assured, similar problems will be encountered in future projects. It is our sincere hope that this will not be the case.

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While we do not wish to restate all of the concerns mentioned in our previous comments, the Tribe believes that a brief restatement of some of them is important to set the context of our new comments. The primary concerns we expressed in our prior comments were as follows:

- Native American's energy needs have frequently not been met, even though major generation and transmission projects are often actually located on reservations. On many reservations, power has been unavailable, even though high voltage wires run overhead. This has had an extremely negative impact upon the economic development of many reservations.
- Tribal concerns related to the impact transmission projects will have on historical and cultural resources, particularly sacred sites, have not been recognized or have only been dealt with superficially. The companies and agencies dealing with these issues often delegate them to consultants who are not concerned with the tribal government's interests, and who do not make the tribal governments partners in their assessments. This has led to a reluctance on the part of tribal governments to permit transmission development on their reservations, and sometimes provided a motivation on the part of the tribal governments to oppose development off their reservations. As tribal governments develop the resources to contest such development, such potential conflicts will become increasingly important.
- Tribal governments have not received adequate compensation for the use of transmission right-of-ways and easements. This has led to a realization on the part of many Tribal governments that the granting of such right-of-ways and easements in the traditional manner is no longer economically viable, and that new methods must be developed to adequately compensate tribal governments for such use of tribal lands. The necessity of appropriate compensation should be recognized in the Commission's Transmission Vision.
- Tribal sovereignty over reservation lands has not been adequately considered. This has led to a basic failure to incorporate Tribal input in project construction and operating decisions.

In order to respond to these concerns, the Tribe stated that the following considerations should be incorporated in the Transmission Vision document. The

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Tribe believes that these positions should also be incorporated in the other provisions of the White Paper. These considerations are:

- The Commission's White Paper must encourage development through an inclusive process, a process that provides specific assurance to tribal governments and others that their reasonable concerns will be addressed in the permitting process.
- The White Paper needs to acknowledge that tribal governments are sovereigns and that tribal leadership needs to be consulted and their approval obtained throughout the planning, construction and operation of transmission projects.
- If tribal cooperation for Transmission projects is to ever be expected, the White Paper and the actual plans for each project must accommodate energy needs on any impacted reservation, as well as the providing of transmission on the reservations for energy projects to be developed on the reservations.
- The White Paper needs to recognize the need to provide transmission service off the reservation to tribal governments, particularly as tribal governments develop generation projects and form their own utilities to serve their traditionally underserved reservations.
- Tribal governments should be actively involved in all of the cultural and historical resource work issues relating to the construction of transmission lines. This should include the retention of Native American contractors that have approved by the particular tribal government to undertake such work.
- The White Paper needs to recognize the important role that the development of renewable energy on reservations will play in California's energy future and needs to provide necessary transmission for these projects.
- The White Paper must recognize that, although important, transmission is only one of the many planning considerations that communities face. The Commission should not lose sight of the fact that, if they are to be constructed at all, transmission projects will need to be consistent with the developmental aspirations of the communities in which they will be located, and not constitute a threat to cultural or historical resources.

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- The White Paper should recognize that resources will often need to be provided to tribal governments so that their adequate participation in the transmission planning process can be assured.

The Tribe believes that these propositions should be incorporated in the more general provisions of the White Paper document. We also provide the following additional comments for the Commission's consideration with regard to the White Paper.

I. The Role Of Tribal Governments In The Transmission Planning Process

The Staff's Draft Executive Summary states that the collaborative state transmission planning process should include the Independent System Operator, investor-owned and public utilities, as well as "the various stakeholders." The Tribe believes that tribal governments should be specifically and expressly recognized in this provision as parties to the collaborative state transmission planning process. Tribal governments are independent sovereigns, often possess right-of-ways that are essential to transmission development, and (increasingly) are operating their own utilities (or are planning to do so). Relegating tribal governments to "stakeholder" status carries the risk of overlooking their importance to the transmission planning process. For this reason, the tribal governments participation in the transmission planning process should be directly sought and recognized. The need to do this should be expressly noted by language in the White Paper directing tribal participation.

We further note that the White Paper states that:

Without land available for transmission facilities, new facilities cannot be built, which jeopardizes California's ability to access less expensive energy and renewable resources to meet the Renewables Portfolio Standard (RPS), and meet the reliability needs of the electrical system.

In the past, tribal governments have played a significant role in transmission development by providing land to be utilized for transmission resources. We expect that they will be called upon to play this role again. However, it should be expected that, in the future, tribal governments will require fair value and benefits from the developers of transmission projects in exchange for right-of-ways. Moreover, such developments will have to be considered in the context of development plans on reservations. For this reason, it is essential that the White Paper expressly recognize the need for tribal governments to be participants in the collaborative planning process and to recognize that benefits from the process will need to flow to the tribal governments.

## II. The Tribal Governments' Role In Renewable Resources

The White Paper acknowledges the important role that renewable resources will play in California's energy future, as well as the need to plan for transmission for these resources. A large proportion of the nation's renewable resources are located on reservations. These resources will be essential to our energy future. Accordingly, the location of renewable resources on reservations and the adequacy of transmission paths that either presently exist (or that will need to be constructed in the future) are important issues that will need to be considered as part of any transmission planning process contemplated in the White Paper. For this reason, the contribution that tribal governments can make, and the need to incorporate tribal governments as important parties in the transmission planning process must be expressly addressed in the document.

## III. The Need To Incorporate Independent Tribal Utilities In The Planning Process

Many tribal governments have either formed, or are considering the possible formation of tribal utilities. It can be expected that this trend will continue in the future. The tribal governments following this course may be able to attract substantial energy resources to California. The formation of these tribal utilities raises many questions with regard to how they will be integrated into the existing transmission system. The White Paper needs to expressly note this potential, and to provide for the accommodation and participation of these tribal utilities in the transmission planning process.

## IV. The Tribal Governments' Participation In Short Term Project Review

The White Paper indicates that the California investor-owned and municipal utilities, renewable generation developers, other governmental agencies, and interested members of the public should participate in an annual examination of the short-term planning projects identified by the California ISO and other stakeholders. (Draft at page 26) However, because of their sovereign status, and the significant role that tribal governments will certainly play in transmission development, the White Paper should also expressly recognize that tribal governments need to be participants in this review.

## V. The Tribal Governments' Role In Transmission Corridor Planning

The Tribe agrees that transmission corridor planning will be an important part of the development of transmission infrastructure projects in California. Tribal governments must play an important role in this corridor planning effort because of the substantial amount of transmission right-of-way that must pass through reservations, as well as the fact that tribal governments will be playing an increasing role in generation development. Moreover, the needs of the tribal

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governments as consumers and, in many instances, independent utilities will need to be considered as part of the corridor planning process. For this reason, the White Paper should expressly acknowledge this role, and expressly incorporate tribal governments in the corridor planning process as parties.

VI. The Tribal Governments' Role In Alternatives To Transmission Projects

The Tribe agrees that formal consideration of transmission alternatives should be an important element in the transmission planning process. The potential for renewables, fuel cells, distributed generation, and energy facilities that can be permitted outside of state regulatory processes should be taken into account when plans to build transmission are considered. Tribal governments are essential participants to this consideration.

As noted above, it can be expected that tribal governments will play a significant role in the development of renewable and other generation projects. Moreover, some tribal governments have already begun significant efforts in the area of Distributed Generation. Further, it must also be recognized that a substantial amount of infrastructure development can be anticipated on reservations as tribal governments expand their commercial base. It can be expected that such development shall present opportunities that will facilitate "non-wires" options. Significant progress toward the alleviation of regional conditions may be achieved if these tribal opportunities are recognized and are incorporated in the planning process. The White Paper should therefore expressly consider and acknowledge the contribution that tribal governments will be able to make in this regard.

VII. The Draft Transmission Vision

Staff has suggested that the adoption of the draft transmission vision statement is premature at this time. The Tribe agrees, but requests that, if the vision is considered in the 2005 Energy Report process, tribal representatives be permitted to participate in that consideration, and that the role of tribal governments be actively considered as part of that process.

Again, we thank the Commission for the opportunity to participate in this process and look forward to a meaningful dialogue with the Commission on how these comments can be incorporated into the White Paper.